IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

R.F.A.No. 190 of 2003.

Judgment reserved on :20.5.2009

Date of decision : June 1, 2009.

State of Himachal Pradesh & Anr. …Appellants.

Versus

Jeet Ram ....Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the Appellants	**:**	**Mr. A.K.Bansal, Additional Advocate General.**
For the Respondent	**:**	**Mr. Ramesh Sharma, Advocate.**

Kuldip Singh , Judge

This appeal has been directed against the award dated 30.9.2002 passed by Additional District Judge, Shimla in land reference No.9-S/4 of 1999.

2. The facts in brief, are that land comprised in khasra Nos. 7/1, 20/1, 23/1, total measuring 0-16 biswas situate at Village Rauri, Tehsil and District Shimla of respondent was acquired for construction of Hira Nagar – Dhamoon road vide notification under Section 4 of the Land Acquisition Act, 1894 (for short 'Act') which was published in the gazette on 25.11.1995. The Collector, vide

---

[1] *Whether reporters of Local Papers may be allowed to see the Judgment ?.yes.*

award No.21/96 dated 31.12.1996 assessed the market rate of the acquired land as per classification to the following effect:-

(i) Bangar Aval.	Rs.36,666.70	per Bigha
(ii) Bangar Doem.	Rs.33,333.30	- do -
(iii) Bangar Soem	Rs.16,666.50	- do -
(iv) Banjar Kadim	Rs. 8,000.00	- do –
(v) Ghasni.	Rs. 2,000.00	- do

3. The respondent was aggrieved by the rate given by the Collector for the acquired land , therefore, he filed petition under Section 18 of the Act for determination of market value of the acquired land and the compensation. The Additional District Judge has determined the market value of the acquired land as per classification to the following effect:-

(i) Banjar Kadeem	Rs.40,000/-	Per bigha
(ii) Bangar Soem	Rs.1,00,000/-	Per bigha
(iii) Bangar Doem	Rs.2,50,000/-	Per bigha.

The Additional District Judge in the award dated 30.9.2002 has further allowed interest at the rate of 12% per annum from the date of taking of possession of the acquired land till the date of publication of the Notification under Section 4 of the Act, 30% solatium on the enhanced amount of compensation, 9% interest per annum from the date of taking of possession of the acquired land for one year and thereafter, at the rate of 15% per annum till the enhanced amount is paid.

4. The respondent had filed application under Section 152 C.P.C. for making corrections in paras 24, 25 of the award dated 30.9.2002. The Additional District Judge vide order dated 7.12.2002 in CMP No.9/S/6 of 2003/2002 has ordered that in para 24 of the award in

place of Rs.36,000/- an amount of Rs.3,60,000/- as value of Bangar Aval be substituted. In para 25 of the award, "Interest at the rate of 12 percent per annum enhanced amount of compensation from the date of taking the possession of the acquired land till the date of publication of notification under Section 4 of the Land Acquisition Act". was ordered to be substituted by "the amount calculated at the rate of 12 per cent per annum on such market value for the period commencing from the date of publication of the notification under Section 4 of the Act to the date of the award of the Collector".

5. Heard and perused the record. It has been submitted on behalf of the appellants that the Additional District Judge has not assessed the market value of the acquired land as per law. The enhancement of amount over and above the award of Land Acquisition Collector is wrong. The learned counsel for the respondent has supported the impugned award.

6. Ex.PW-2/A is the certificate that in mauza Dadhol pargna Kaljoon , Tehsil Shimla no sale took place from 1.1.1994 to 31.12.1994, Ex.PW-2/B is the certificate that in mauza Panewla, pargna Kaljoon, no sale took place from 1.1.1994 to 31.12.1996, Ex.PW-2/C pertains to average sale price from 16.6.1994 to 15.6.1995 of mauza Rehal Baichiri, Tehsil and District Shimla showing the rate of Bangar Soem Rs. 9,375/- per biswa and that of Bangar Doem Rs.23,250/- per biswa. Ex.PW-4/A is the copy of sale deed dated 22.7.1995 indicating that the land measuring 4 biswas in mauza Rehal Baichiri was sold by Mohan Singh through General Power of Attorney Chander Parkash Mehta to Jagdish Kumar Verma for Rs.50,000/-.

7. Ex.RW-1/A is the average sale price of land from 16.10.1994 to 17.10.1995 of mauza Rehal Baichiri showing the average sale price of

Bangar Doem Rs. 4,65,000/-, Bangar Soem Rs.1,87,500/- and Banjar Kadeem Rs.67,500/- per bigha. ExRW-1/B is the average sale price of mauza Dadhol from 16.10.1994 to 17.10.1995 showing average sale price of Bangar Doem Rs. 66,666.60, Bangar Soem Rs. 33,333.20 and Banjar Kadeem Rs. 16,000/- per bigha. Ex.RW-1/C is a copy of letter dated 12.12.1996 of Collector Shimla to Land Acquisition Collector, HPPWD, Winter Field, Shimla approving the rates of land in villages Rehal Baichiri and Dadhol to be acquired for construction of Hiranagar – Dhamoon road to the following effect:-

(A) <u>Mauja : Rehal – Baichiri :</u>

(i) Bangar Doem	Rs. 4,65,000.00 per bigha
(ii) Bangar Soem	Rs. 1,87,500.00 per bigha
(iii) Banjar Kadeem	Rs. 67,500.00 per bigha

(B) <u>Mauja : Dadhol:</u>

(i) Bangar Doem	Rs. 66,666.60 per bigha
(ii) Bangar Soem	Rs. 33,333.20 per bigha
(iii) Banjar Kadeem	Rs. 16,000.00 per bigha

8. PW-1 Jeet has stated that his land was taken into possession by the Government in December 1983 for the construction of road from Hiranagar – Dhamoon. The land is situated at a distance of 15 km. from Shimla in Tehsil Shimla and is at a walking distance of 15 – 20 minutes from Hiranagar. He is entitled to compensation at the rate of lands in Rehal Baichiri. This land is situated in between Ganahati and Jubbarhatti. The boundary of village Rauri where the acquired land is situated touches with Baichiri. The market value of the land is more than Rs.10,00,000/- per bigha. PW-2 Ram Lal has stated that the acquired land is adjacent to Baichiri. The boundaries of Kutasani, Rauri and Dadhol touches with Rehal Baichiri. He has proved Ex.PW-2/A,

Ex.PW-2/B and Ex.PW-2/C. The acquired land is in between Ganahati and Jubbarhatti air port. The market value of the acquired land is very high due to market and industry in Ganahati. PW-3 Nek Ram has stated that the acquired land is adjacent to Rehal Baichiri and falls in Baichiri Panchayat. The acquired land is in between Ganahati and Jubbarhatti airport having very high market value. PW-4 Chander Parkash has stated that he is General Power Attorney holder of his cousin Mohan Singh. He had sold 4 biswas land of Mohan Singh to Jagdish Kumar on 1.6.1995 for Rs.50,000/-. The classification of the land was 'gair mumkin' and falls in Baichiri chak. Ex.PW-4/A is the copy of sale deed. PW-5 Chaman Gupta has stated that he had purchased 4 biswas land at Rehal Baichiri from Ramesh Sharma on 6.1.1996 for Rs.25,000/-. This land is near to the land of the respondent. The statement of Jagdish Kumar was recorded on Commission and he is the vendee of sale deed Ex.PW-4/A. He has stated that the land purchased by him is adjacent to acquired land.

9. RW-1 Roshan Lal is Patwari in Land Acquisition Office, Winter Field, Shimla and he has placed on record the average sale price of one year of mauza Baichiri Ex.RW-1/A, mauza Dadhol Ex.RW-1/B and rates approved by Collector Ex.RW-1/C.

10. The exemplars of mauza Rauri have not been placed on record by either side. It has come on record that mauza Rehal Baichiri is adjacent to mauza Rauri, therefore, the sale transactions of mauza Rehal Baichiri are relevant for determining the market value of the acquired land situate at village Rauri. The Additional District Judge while determining the market value of acquired land situate at village Rauri has taken into consideration the sale transactions of adjacent mauza Rehal Baichiri and mauza Dadhol. In my opinion, in absence of evidence of sale transactions of village Rauri, it cannot be said that Additional District Judge has committed any error in considering transactions of adjacent mauzas Rehal

Baichiri and Dadhol. It is not the case of the appellants that after taking into consideration the transactions of mauza Rehal Baichiri and mauza Dadhol, the Additional District Judge has wrongly calculated the average market value of Banjar Kadeem, Bangar Soem and Bangar Doem at Rs.40,000/-, Rs.1,00,000/- and Rs.2,50,000/- respectively. The case of the appellants is that the market value as assessed by the Collector is just and equitable and does not require any modification.

11. The notification under Section 4 of the Act was published in the gazette on 25.11.1995, hence sale transactions of the period around 25.11.1995 are relevant. The appellants have placed on record average sale price of mauza Rehal Baichiri Ex.RW-1/A and that of mauza Dadhol Ex.RW-1/B for the period 16.10.1994 to 17.10.1995. The Collector vide Ex.RW-1/C has also approved the rates for acquisition of land for construction of Hiranagar – Dhamoon road in villages Rehal Baichiri and Dadhol as noticed above. Therefore, no fault can be found with the market value of the land determined by the Additional District Judge on the basis of average sale price of land in villages Rehal Baichiri and Dadhol which are adjacent to village Rauri where the land was acquired. The Collector in the award dated 31.12.1996 has observed that the possession of the acquired land is partly with the Public Works Department and Field Kanungo shall hand over possession of the remaining land to the Acquiring Department.

12. The Additional District Judge vide order dated 7.12.2002 has ordered substitution of rate at Rs.3,60,000/- per bigha for Bangar Aval against Rs.36,000/- per bigha in para 24 of the award. But in para 24 of the impugned award, no such rate of Bangar Aval has otherwise been determined by the Additional District Judge. Therefore, reference of rate at Rs.3,60,000/- per bigha for Bangar Aval in para 24 of the impugned award by Additional District Judge in order dated 7.12.2002 is

inconsequential. It is now settled proposition of law that interest at the rate of 9% per annum for one year and thereafter at the rate of 15% per annum is payable from the date of publication of notification under Section 4 of the Act. In the present case, such notification was published on 25.11.1995. Therefore, interest at the rate of 9% per annum for one year from the date of publication of notification under Section 4 of the Act i.e. 25.11.1995 and thereafter at the rate of 15% per annum shall be payable. The appellants have failed to make out any case for interference except to the extent that interest of 9% per annum and 15% per annum shall be payable, as noticed above.

13. No other point was urged.

14. The result of the above discussion, the appeal fails and is accordingly dismissed subject to modification of payment of interest at the rate of 9% per annum and 15% per annum, as indicated above. No costs.

(Kuldip Singh),
Judge.

June 1, 2009.
(GR)